

Interview Summary

Application No.

10/760,648

Applicant(s)

SMITH, FRED P.

Examiner

James Keenan

Art Unit

3652

All participants (applicant, applicant's representative, PTO personnel):

(1) James Keenan.

(3) _____.

(2) John Pate.

(4) _____.

Date of Interview: 05 October 2006.

Type: a) ☐ Telephonic b) ☐ Video Conference

c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: _____.

Claim(s) discussed: 1-20.

Identification of prior art discussed: Safko, Kellogg, both of record.

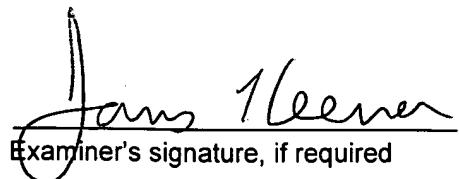
Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant submitted an After-final amendment (attached). Examiner agreed that independent claims 1, 11, and 16 as amended define over the rejections of record but would raise new issues. Applicant indicated that an RCE would be filed.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

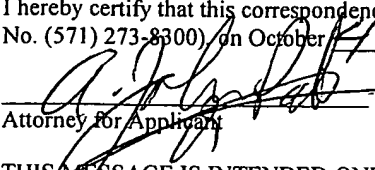
Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (Fax No. (571) 273-8300) on October 17, 2006.


Attorney for Applicant

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Docket No. 3339-2-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Fred P. Smith)	
)	
Serial No.:	10/760,648)	
)	
Filed:	January 20, 2004)	Art Unit:
)	3612
)	
For:	CARGO UNLOADING)	
	APPARATUS AND METHOD)	
)	
Examiner:	James W. Keenan)	

AMENDMENT "B"

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA, 22313-1450

Dear Sir:

Responsive to the Office Action mailed August 29, 2006, please reconsider the above-identified patent application in view of the following amendments and remarks.

IN THE CLAIMS:

Please amend the claims as follows:

1. (currently amended) An assembly defining longitudinal, lateral, and transverse directions substantially orthogonal to one another, the assembly comprising:

a vehicle comprising

at least one wheel supporting at least a portion of the weight of the vehicle on a supporting surface, and

a cargo area having a length in the longitudinal direction, a width in the lateral direction, a first end, and a second end longitudinally opposite thereto; and

a flexible member having a first portion ~~to underlie cargo in~~ extending in the longitudinal and lateral directions to substantially completely cover the cargo area and a second portion connecting to the first portion proximate the second end and extending therefrom a length sufficient to pass around the second end to a location of capture thereof between the at least one wheel and the supporting surface, ~~the second portion gradually pulling the first portion around the second end during backing of the vehicle.~~

2. (original) The assembly of claim 1, further comprising a friction-reducing member positioned at the second end and extending at least the width of the cargo area.

3. (original) The assembly of claim 2, wherein the vehicle is selected from the group consisting of a pickup truck, a flatbed truck, a van, and a trailer.

4. (original) The assembly of claim 3, wherein the vehicle provides an opening proximate the second end to pass cargo for removal.

5. (original) The assembly of claim 4, wherein the friction-reducing member comprises a material selected from the group consisting of woods, metals, polymers, elastomers, and composites.

6. (original) The assembly of claim 5, wherein the wherein the friction-reducing member comprises a material selected from the group consisting of polyethylenes and fluoropolymers.

7. (original) The assembly of claim 5, wherein the friction-reducing member comprises at least one roller extending in the lateral direction.

8. (original) The assembly of claim 5, wherein the friction-reducing member comprises multiple, separable sections positioned along the second end of the cargo area in the lateral direction.

9. (original) The assembly of claim 5, wherein the flexible member comprises a material selected from the group consisting of fibers, polymers, elastomers, woven fibers, and composites.

10. (original) The assembly of claim 8, wherein the flexible member is formed of an elastomeric material selected to store energy for increasing a force urging removal of a load from the cargo area.

11. (currently amended) An assembly comprising:

a vehicle comprising

at least one wheel supporting at least a portion of the weight of the vehicle on a supporting surface, and

a cargo area having a length, a width, a first end, and a second end opposite the first end;

a flexible member having a first portion ~~covering at least a portion of~~ extending to substantially completely cover the cargo area and a second portion ~~secured~~ connecting to the first portion proximate the second end to extend therefrom a length sufficient to pass around the second end of the cargo area to be captured between the at least one wheel and the supporting surface; ~~the second portion gradually pulling the first portion around the second end during backing of the vehicle;~~ and

a friction-reducing member positioned proximate the second end to extend substantially the width of the cargo area.

12. (original) The assembly of claim 11, wherein:

the vehicle is a pickup truck having a tailgate defining the second end of the cargo area, the tailgate having a left side and a right side; and

the friction reducing member further extending beyond the left side and the right side of the tailgate.

13. (original) The assembly of claim 12, wherein the friction-reducing member is positioned between the rearwardmost edge of the tailgate, when in the open position, and the second portion of the flexible member.

14. (original) The assembly of claim 13, wherein the friction-reducing member comprises a material selected from the group consisting of woods, metals, metal alloys, polymers, elastomers, and composites.

15. (original) The assembly of claim 14, wherein the friction-reducing member comprises at least one roller.

16. (currently amended) A method comprising:

providing a vehicle comprising at least one wheel supporting at least a portion of the weight of the vehicle, and a cargo area having a length, a width, a first end, and a second end opposite the first end;

providing a flexible member having a first portion, and a second portion extending

therefrom to a distal edge;

OK ~~providing~~ covering at least a portion of the cargo area with the first portion of the flexible member;

depositing a load ~~on~~ directly onto the first portion of the flexible member to be supported by the cargo area;

moving the load and vehicle to a desired location;

extending the second portion of the flexible member from the cargo area, around the second end of the cargo area, to a location behind the at least one wheel;

backing the vehicle over the distal edge to capture the second portion between the at least one wheel and a supporting surface therebelow; and

continuing to back the vehicle until a length of the first portion passes under the second end and a desired amount of the load has been discharged from the cargo area.

17. (original) The method of claim 16, further comprising providing a friction-reducing member having a length equal to at least the width of the cargo area.

18. (original) The method of claim 17, further comprising positioning the friction-reducing member at the second end of the cargo area to reduce friction as the second portion of the flexible member slides around the second end of the cargo area during backing of the vehicle.

19. (original) The method of claim 18, further comprising securing the second portion of the flexible material over the top of the load prior to moving the vehicle.

20. (previously presented) An assembly defining longitudinal, lateral, and transverse directions substantially orthogonal to one another, the assembly comprising:

a vehicle comprising

at least one wheel supporting at least a portion of the weight of the vehicle on a supporting surface, and

a cargo area having a length in the longitudinal direction, a width in the lateral direction, a first end, and a second end longitudinally opposite thereto, the second end comprising a tailgate in an open position; and

a motive member having a first portion positioned to urge cargo away toward the second end and a second portion extending flexibly therefrom to pass around the tailgate and return longitudinally forward to be captured and driven with rotation of the wheel corresponding to longitudinal motion of the vehicle along the supporting surface.

REMARKS

The Office Action mailed August 29, 2006 has been received and reviewed. Claims 1-20 are in the case. Claims 1-15 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1-5, 9, 11, and 16-18 stand rejected under 35 U.S.C. § 102(b). Claims 6-8, 10, 12-15 and 19-20 stand rejected under 35 U.S.C. § 103(a).

By this paper, claims 1, 11, and 16 have been amended. For the reasons set forth below, claims 1-20 are believed to be in condition for immediate allowance. Favorable reconsideration of the application in view of the following remarks, is therefore respectfully requested.

Rejection of Claims 1-15 Under 35 U.S.C. §112, second paragraph

Claims 1-15 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Office Action finds "pulling ... during backing of the vehicle" to be indefinite when included in a method claim.

By this paper, claims 1 and 11 have been amended to remove the cited language. Accordingly, reconsideration of claims 1-15 is respectfully requested.

Rejection of Claims 1-5, 9, 11, and 16-18 Under 35 U.S.C. §102(b)

Claims 1-5, 9, 11, and 16-18 stand rejected under 35 U.S.C. §102(b) as being anticipated by Safko. However, for a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. Moreover, those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim. Safko does not meet this test.

For example, with respect to claims 1-5, 9, and 11, Applicant finds in Safko no disclosure of a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom a length sufficient to pass around the second end to a location of capture thereof between a wheel and a supporting surface.

Rather, Applicant finds that while Safko discloses a cargo unit 5, Safko does not disclose any second portion connecting to that cargo unit 5 proximate a second (rearward) end of the cargo unit. *See* Safko at Figure 1 (lack of a connection is shown between belts 3, 4 and cargo unit 5 proximate the second end of the truck bed) and col. 1, lns. 30-39 (stating that belts are “13 feet in length or the full length [of the truck bed] to the tail gate plus about 7 feet ... [which is] ... sufficiently long that their rear ends may be manually projected underneath the rear tires”). Accordingly, the cargo area 5 and belts 3, 4, of Safko do not combine to form the flexible member claimed by Applicant.

Also, Applicant finds that while Safko discloses belts 3, 4 that extend into the cargo area and also extend to a location beneath the rear wheels, Safko does not disclose that those belts 3, 4 substantially completely cover the cargo area. That is, Safko discloses belts 3, 4 that are only “about 12 inch [sic] wide.” Safko at col. 1, lns. 32-39. Accordingly, the belts 3, 4 alone of Safko do not form the flexible member claimed by Applicant. Reconsideration of claims 1-5, 9, and 11 is, therefore, respectfully requested.

With respect to claims 16-18, Applicant finds in Safko no disclosure of depositing a load directly onto a first portion of a flexible member and then backing a vehicle until a length of the first portion passes under the second end of the vehicle. While Safko may disclose placing a

cargo onto a cargo unit 5, Safko discloses that the cargo unit is not pulled under the second end of the vehicle. *See* Safko at Figure 1.

Also, while Safko discloses an alternative embodiment where a mat is used “instead of [a] cargo unit,” Applicant finds no teachings or suggestions in Safko indicating that such a mat would function any differently than the cargo unit 5. That is, it is pure conjecture for the Office Action to assert that the mat would somehow behave differently than the cargo unit and, in operation, be pulled under or around the second end of the cargo area. In fact, Safko’s silence on this particular detail more reasonably leads to an opposite conclusion (*i.e.*, that the mat is connected and functions as does the cargo unit, making further qualification unnecessary).

Finally, while the belts 3, 4 of Safko may be pulled under a distal end of the illustrated truck, such belts 3, 4, do not anticipate Applicant’s recitations because they never have a load placed directly thereon (*i.e.*, only the cargo unit 5 may have a load directly thereon). *See* Safko at Figure 2. Accordingly, reconsideration of claims 16-18 is respectfully requested.

Rejection of Claims 6 and 19 Under 35 U.S.C. §103(a)

Claims 6 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Safko. However, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP 2143. Safko does not meet this test.

With respect to claim 6, as presented hereinabove, Safko does not teach or suggest a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom a length sufficient to pass around the second end to a location of capture

thereof between a wheel and a supporting surface. Accordingly, reconsideration of claim 6 is respectfully requested.

With respect to claim 19, as presented hereinabove, Safko does not teach or suggest depositing a load directly onto a first portion of a flexible member and then backing a vehicle until a length of the first portion passes under the second end of the vehicle. Accordingly, reconsideration of claim 19 is respectfully requested.

Rejection of Claims 7-8, 10, 12-15, and 20 Under 35 U.S.C. §103(a)

Claims 7-8, 10, 12-15, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Safko in view of Kellogg. However, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP 2143. The combination of Safko and Kellogg does not meet this test.

With respect to claims 7-8, 10, and 12-15, as presented hereinabove, Safko does not teach or suggest a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom a length sufficient to pass around the second end to a location of capture thereof between a wheel and a supporting surface. Moreover, adding the teachings of Kellogg to those of Safko does not remedy the deficiencies of Safko. Kellogg is completely silent on the issue of a flexible member and is only cited by the Office Action for its teaching of a loading tailgate with rollers. Accordingly, reconsideration of claim 7-8, 10, and 12-15 is respectfully requested.

With respect to claim 20, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See* MPEP 2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Accordingly, because Sakfo teaches against Kellogg, there is no suggestion or motivation to combine and Sakfo and Kellogg cannot properly form the basis of an obviousness rejection of claim 20.

Specifically, the truck 1 taught by Sakfo would have had a tailgate when originally manufactured. However, as can be seen in Figures 1-4, Sakfo teaches removal of the tailgate before the invention thereof is implemented. Also, Sakfo states, “the extensions may be folded 90° to serve as a tail gate to substitute for the tail gate of the vehicle which has been previously removed.” Sakfo at col. 1, lns. 39-42 (emphasis added). Thus, Sakfo teaches against the use of tailgates.

In direct contrast to Sakfo, Kellogg teaches “a loading tailgate for a truck body.” Thus, Sakfo’s teaching of tailgate removal is in direct opposition to Kellogg’s teaching of tailgate use. This teaching against destroys any motivation to combine Sakfo and Kellogg. *See* MPEP 2143.01. Accordingly, there can be no proper *prima facie* case built on Sakfo and Kellogg.

The Office Action’s response to the foregoing analysis is based wholly on conjecture, using Applicant’s specification as a template, and is, therefore, unsatisfactory and improper. For example, the Office Action states that “the only reason Sakfo removes the tailgate is because the replacement cargo carrier 5 is longer than the original bed.” Notably, the Office Action provides

no citation for this assertion. In fact, Safko makes no such statement. Rather, this assertion is the Office Action's guess as to why Safko teaches removal of the tailgate.

Similarly, the Office Action states that "Safko still uses a tailgate, it is just not the original one." Again, the Office Action cites no support for this assertion. Perhaps, the Office Action is referring to the fact that Safko teaches that belts 3, 4 "may be folded 90° to serve as a tail gate." Safko at col. 1, lns. 39-40 and Figure 3. However, even if such flexible belts may be considered a "tail gate," such a flexible tailgate would be antithetical to and wholly incompatible with the roller members 56, 58 of Kellogg that require a tailgate of significant rigidity and strength to support "heavy objects 166 or 168." Kellogg at col. 3, lns. 24-26 and Figures 3, 4.

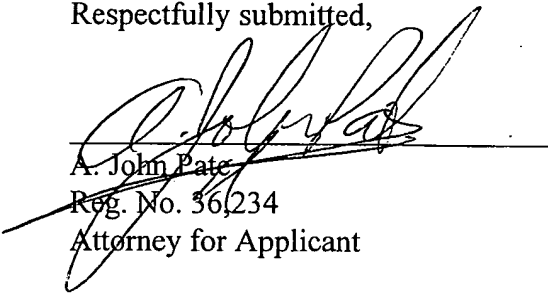
Finally, the Office Action states that "in the embodiment where a mat (which presumably would fit within the confines of the original cargo bed) rather than the cargo carrier 5 is used, use of the original tailgate would clearly be desirable. Again, the Office Action fails to meet its burden, citing no support for these presumptions and assertions. Again, no support for such presumptions and assertions exists in Safko. They amount to nothing more than wishful thinking.

The unsupported assertions and hindsight in the Office Actions rejection of claim 20 do not withstand scrutiny and are contrary to proper requirements. The fact remains that there can be no motivation to combine Safko and Kellogg because the former teaches removal of a component vital to the latter. Accordingly, reconsideration of claim 20 is respectfully requested.

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 4th day of October, 2006.

Respectfully submitted,



A. John Pate

Reg. No. 36,234

Attorney for Applicant

Date: October 4, 2006

PATE PIERCE & BAIRD
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215 South State Street
Salt Lake City, Utah 84111
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10/04/2006 12:39 FAX 8015305955

PATE PIERCE BAIRD

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Attest: *[Signature]*
Attorney for Applicant

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Docket No. 3339-2-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Fred P. Smith)
Serial No.:	10/760,648)
Filed:	January 20, 2004) Art Unit:
For:	CARGO UNLOADING) 3612
	APPARATUS AND METHOD)
Examiner:	James W. Keenan)

AMENDMENT "R"

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA, 22313-1450

Dear Sir:

Responsive to the Office Action mailed August 29, 2006, please reconsider the above-identified patent application in view of the following amendments and remarks.